

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LABOUR DIVISION)
AT DAR ES SALAAM**

REVISION NO. 366 OF 2020

BETWEEN

BAKE FOOD INTERNATIONAL LTD..... APPLICANT

VERSUS

MARY C. SINGANO & 33 OTHERS RESPONDENTS

JUDGMENT

S.M. MAGHIMBI, J:

Aggrieved by the decision of the Commission for Mediation and Arbitration for Kinondoni ("CMA") in Labor Dispute No. CMA/DSM/KIN/R.760/16/339 ("the dispute"), the applicant has lodged this application under the provisions of Section 91 (1) (a), 91 (2) (c), Section 94 (1) (b) (i) of the Employment and Labour Relations Act, No. 6 of 2004, as amended ("ELRA"); Rule 24 (1), 24(2), (a), (b), (c), (d), (e) and (f) Rule 24 (3) (a), (b), (c) and (d) and Rule 28 (1) (c), (d) and (e) of the Labour Court Rules Government Notice Number 106 of 2007 ("the Rules"). She is moving the Court for the following:

- i. That, this Honourable Court be pleased to call for records, revise the proceedings and set aside the Award of the Commission for Mediation and Arbitration at Dar es salaam in Labour Dispute No.

CMA/DSM/KIN/R.760/16/339 which was delivered by **Hon. ALFRED MASSAY**, Arbitrator on 21st March, 2018.

Brief background of the matter is that the Respondents in this matter were employed by the applicants as workers and they were paid every day when they report on duty and finish their work. On the 25th January 2016, their employment where terminated due to gross misconduct on engaging on unlawful strike. The Respondents were aggrieved by Applicants' decision and lodged a dispute at the CMA which passed an award in favor of the respondent, declaring their termination to be procedurally unfair but substantively fair. The CMA awarded the respondents a compensation of four months' salary for each and their annual leave pay. Aggrieved by the award, the applicant has lodged the current application raising the following legal issues:

1. That trial Arbitrator error in law and facts to decide that Applicant to pay compensation for Respondents while proved that Respondents engaged on unlawful strike.
2. That trial Arbitrator error in law and facts to decide that Applicant to pay compensation for Respondent without to regard that Respondent were a causal employee for Applicant and were not engaged on permanents terms.

3. That trial Arbitrator error in law and facts to decide that Applicant to pay Respondents compensation while they failed to their allegation that their termination was unfairly terminated.

The application was disposed by way of written submissions. Before this court, the applicant was represented by Mr. Likulile Mussa Ally, personal representative while the respondents were represented by Mr. Saulo Kusakalah, learned advocate.

Having considered the submissions of both parties, the issue before me is whether the termination of the respondents was procedurally fair. According to the undisputed evidence on records, the respondents were terminated following what was termed as an unlawful strike. The only issue raised is whether the procedure for the termination was followed. In his submissions, Mr. Likulile insisted that the Arbitrator did not consider the fact the respondents engaged in unlawful strike which is a serious offence that can cause arrest and it is unproductive as it can cause loss of profits to the applicant. He argued that it is for this reason that the management made a stern measure by calling the director of trade union and labor officials to solve the dispute. That the respondents did not resume to duty. He referred to a case of Amos Henry & 5 others Vs. TTC, Revision No. 58/2013 where it was held that the contract of applicants under specific

task ends at the completion of the task and are not entitled to terminal benefits. With respect, the case does not fit into the current circumstances because in this case, the respondents were terminated for engaging in unlawful strike and not at the completion of their specific tasks.

In reply, Mr. Kusakala argued that this is a new issue which was neither raised, formulated nor discussed at the CMA. The issue at the CMA was whether the termination of the applicant was procedurally and substantively fair. At this point, I am in agreement with Mr. Kusakala that the issue was not tabled for determination at the CMA, it cannot be raised at this point.

Turning to the substance of revision, whether the termination of the respondents was procedurally fair, it would appear the applicant wishes to be waived of the procedures of termination on the ground that the respondents were engaged in an unlawful strike which was a serious offence which caused loss to the applicant. However, the procedures for termination of employees is laid down in the Employment and Labor Relations (Code of Good Practice) Rules, G.N No. 42/2007 ("the Code"). The Code has elaborated situations in which the contract may terminate automatically. To start with Rule 5(1) of the Code, it provides;

A contract of employment may be terminated automatically in certain circumstances such as death or loss of profession of the business (sequestration) of the employer.

Further to that, Rule 5(3) provides;

"Unless the contract of employment provides otherwise, a contract of employment may terminate automatically when the employee reaches the agreed or normal age of retirement."

Looking at the records, the employment relationship that existed between the applicant and the respondents did not fall under any of the categories of the automatic termination provided for above. Therefore if the respondents were engaged in unlawful strike, the applicant was still duty bound to follow the procedures provided for under the law, failure of which, the termination of the employees becomes procedurally unfair. That being the case, I see no merits in this application and it is hereby dismissed in its entirety.

Dated at Dar es Salaam this 03rd day of March, 2022.




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S.M. MAGHIMBI
JUDGE